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November 22, 2023

The Honorable Charles R. Breyer
United States District Court, Northern District of California
Phillip Burton Federal Building & United States Courthouse
450 Golden Gate Avenue
San Francisco, California 94102

Re: *In Re: Uber Technologies, Inc., Passenger Sexual Assault Litigation*, MDL No. 3084

Your Honor:

Undersigned counsel represent: (1) approximately 86% of the law firms with cases currently in this MDL and (2) all MDL plaintiffs not represented by the four Uber JCCP leadership law firms.¹ We submit this letter in response to the leadership applications recently filed by those JCCP lead firms and in support of the Proposed Leadership Group (“PLG”) identified by all of the non-JCCP lead attorneys in their leadership applications. *See Exhibit A.*

As set forth in their individual applications, the PLG attorneys have extensive experience and expertise relevant to complex mass tort litigation, and to these cases in particular, as well as the resources and shared commitment to push this litigation forward efficiently. This response does not repeat the points made in those applications. Instead, the PLG highlights two overarching considerations that support why the Court should appoint the PLG, and why the MDL Co-Leads should be separate from JCCP leadership.

The PLG Has Demonstrated the Ability to Move the Litigation Forward Effectively.

The goal of a leadership appointment is to identify the attorneys who will “achieve[] efficiency and economy without jeopardizing fairness to the parties,” Fed. J. Ctr., *Manual for Complex Litig. (Fourth)* § 10.221, and “who will best serve the interest of the plaintiffs,” *In re Gas Nat., Inc.*, No. 1:13-cv-02805, 2014 WL 12591684, at *1 (N.D. Ohio Mar. 7, 2014) (citation omitted). One strong indicator of how effectively proposed counsel will work on Plaintiffs’ behalf is the degree to which counsel have already done so. *See, e.g., In re Clearview AI, Inc., Consumer Privacy Litig.*, No. 135-md-2801 at 2 (N.D. Ill. Mar. 10, 2021) (appointing the firm who “has taken the lead in aggressively moving this litigation forward”); *Nicolow v. Hewlett Packard*

¹ The four JCCP leadership firms are: Williams Hart & Boundas, Estey-Bomberger, Cutter Law, and Levin Simes (formerly Levin Simes Abrams LLP).

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Co., No. 12-05980 CRB, 2013 WL 792642, at *8 (N.D. Cal. Mar. 4, 2013) (identifying “which movant has demonstrated a superior ability to move this litigation forward effectively and efficiently”).

Here, the PLG has already worked collaboratively to advance the case. *See MCL* § 10.224 (noting importance of the “ability to command the respect of their colleagues and work cooperatively with opposing counsel and the court”). The PLG meets weekly and has secured internal consensus on case management proposals, including priority discovery, pleadings, trial tracks, fact sheets, and foundational case management orders. *See ECF 57* (setting out proposals). The PLG’s deliberate approach has resulted in “a cohesive group” that “mesh[es] well together” and “that is committed to the team.” *In re Syngenta AG MIR162 Corn Litig.*, No. 14-md-2591, 2015 WL 13679782, at *2 (D. Kan. Feb. 13, 2015). Courts have noted the benefits of appointing such a leadership group, as self-selected by its members: “[H]aving thought this through well in advance,” the group “put together a team which certainly is not lacking in talent and has the distinct advantage of having committed itself in advance to solving this problem together.” *Id.*

The PLG has also worked with Uber’s counsel to advance this litigation forward. The PLG has had numerous conferences with Uber’s counsel on topics including: preservation issues, case management, and preliminary case management orders. For example, after the parties collectively submitted the names of 13 potential special settlement masters (ECF 56, 62, 63), the PLG worked with Uber’s counsel to narrow the list down to two agreed-upon selections. (ECF 88)

The PLG has efficiently worked through these initial matters with Uber’s counsel because it is united and speaking with one voice, even when dividing and conquering the issues. Although the PLG has invited the JCCP leadership to engage with it during these early discussions, the JCCP has chosen to have only passive engagement with the process—either insisting that 18 individuals from the 4 JCCP Co-Lead firms be involved in discussions or ignoring the invitations completely. This is neither efficient nor productive.

The Court Should Appoint MDL Co-Leads Independent from JCCP Leadership.

The Court should ensure the continued efficient progress of this litigation by appointing MDL Co-Leads independent from that of the JCCP. Independent leadership will move the case forward. This case is going to move on a faster track than the JCCP. 11/3/23 Hearing Tr. at 9:16-22 (indicating the MDL would “move a lot faster” than the JCCP’s May 2025 bellwether schedule). And the focus of the litigation—and necessarily the focus of lead counsel—is different here. The state court proceedings will focus for the next nine months on discovery in 20 bellwether cases, all but one of which are represented by JCCP Co-Lead firms. This MDL, in contrast, will focus first on common discovery and requires leadership available and committed to full resolution of those issues on the fastest possible timeline. Any benefits of JCCP counsel’s knowledge about discovery is limited, as the JCCP has not progressed much beyond the pleadings with respect to common discovery. Nor does their experience in briefing legal matters in the JCCP aid much here, since this Court is not bound by the early demurrer rulings.

There are thousands of Uber sexual assault survivors that will file their cases in the MDL. Uber’s own Safety Reports detail thousands of sexual assaults on its platform every year. This MDL requires a robust leadership with the resources to handle the complex issues with urgency. The PLG’s initial discussions with Uber reveal that the MDL Leadership requires significant resources to address privilege disputes, preservation issues, ESI issues, as well as complex discovery matters. The PLG has the resources to address these matters quickly and effectively.

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Appointing JCCP counsel to leadership here would only invite conflicts over whether the MDL or the JCCP should take priority. The JCCP leads are exceptional counsel who are focused on the JCCP, as they should be. For example, a JCCP Co-Lead seeking MDL Co-Leadership states in his MDL Application that he has only three cases in the MDL, and that he will file more cases in the MDL only if the JCCP's *forum non conveniens* order is affirmed. ECF 116. There is nothing wrong with the state-court lawyers prioritizing the state-court litigation; that is their role as JCCP-appointed leadership. But in selecting MDL leadership here, the Court should identify lawyers who have a demonstrated commitment to the MDL and who do not have potential conflicting interests.

Finally, the PLG recognizes that coordination between the MDL and JCCP is appropriate and necessary. The PLG has had ongoing discussions with members of the JCCP Leadership to facilitate coordination to include two of the members of the JCCP leadership firms as part of the PSC and as liaison counsel. Any concerns regarding coordination with the JCCP are further addressed by the PLG's proposal of Khaldoun Baghdadi as Plaintiffs' MDL liaison counsel.² Mr. Baghdadi, as discussed in his application (ECF 120), has experience as an MDL-JCCP liaison recently in *In re JUUL Labs., Inc., Mkt., Sales Prac., & Prods. Liab. Litig.*, No. 19-2913 (N.D. Cal.). He can interface with the JCCP to ensure that the existence of the two distinct litigations does not impair the progress of this MDL.

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² In addition to Mr. Baghdadi, the PLG also proposed Celine Cutter as Plaintiffs' JCCP Liaison Counsel, a role she currently serves in the JCCP.

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